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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/444,546 11/22/99 MAIER

R 29967US1

000116
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PM82/0228

EXAMINER

COHEN, C

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 02/28/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/444,546

Applicant(s)
Maier

Examiner
Curtis Cohen

Group Art Unit
3634



☒ Responsive to communication(s) filed on Nov 22, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 31-33 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 31-33 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.d. 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 31-33 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 10-13 and 20 of U.S. Patent No. 5,996,283.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter of the instant invention are substantially claimed in the parent patent.

Claims 1, 10 and 20 of U.S. Patent No. 5,996,283 respectively recite "a plurality of fingers", "triangular protuberances...having a pointed apex facing the flange", and "a finger projecting from each protuberance" all of which read on the protuberances of claims 31-33.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claim 33 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 33, line 7, The recitation of “defining interior side walls *nested in* the exterior side walls” is indefinite. It is unclear how the interior side walls can be nested in the exterior side walls and remain “separate from” (see line 6) the exterior side walls. Furthermore, what element is being set forth by “interior side walls?” The exterior walls are disclosed as walls 56 from which the protuberance 165 projects. The only walls that meet this requirement of “interior side walls nested in the exterior side walls” are the walls of the pivot bar 138. If the pivot bar walls are the “interior walls”, then they are not disclosed as being a part of “the housing” as required by line 3 of the claim. Furthermore, for any element to be “nested in the exterior side walls”, the claim must set forth exterior walls *enclosing a space* such that interior walls can be nested within the space. Nevertheless, applicant must first clarify what element is defining the interior side walls.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 31 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Szapucki et al #5,671,958. Szapucki et al teaches a sash having a header and a stile. The sash includes an opening 51 in the sash as best shown in Figure 2. A tilt latch 2 includes a top wall 8, two side walls, a curved rear wall and a front wall (the slender region directly above latch 38 and below top wall 8). The top wall overhangs the side walls, front wall and rear wall thereby defining a "flange." A protuberance 18 projects from each side wall and includes a pointed apex 66 (Fig. 7). The apex is considered pointed since the curved semicircular member defines a zenith, or pinnacle. That is, the curved member 66 has a tangential point that is higher than any other point on the curved member thereby defining a "pointed apex." With respect to claim 33, considering the Section 112 rejection above, it is unclear what element defines the "interior side walls." Until this matter is clarified, the examiner is interpreting the side walls of 28 of the latching mechanism to be the "interior side walls."

Allowable Subject Matter

Claim 32 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

There is no teaching or suggestion in the prior art of record of "a finger projecting from the protuberance into the gap" as recited in claim 32, line 2. The closest prior art appears to be Szapucki et al which teach an pointed apex but fail to teach a finger.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Cohen whose telephone number is (703) 308-2106.

The fax phone number for this Group is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.



C. Cohen

February 25, 2001